

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | WCB Pricing File No. 21-01 |
| Teliax Colorado, LLC |) | |
| Tariff F.C.C. No. 1 |) | Transmittal No. 7 |
| |) | |

ORDER

Adopted: May 7, 2021

Released: May 7, 2021

By the Chief, Pricing Policy Division:

I. INTRODUCTION

1. On April 23, 2021, Teliax Colorado, LLC (Teliax), a competitive local exchange carrier (LEC), filed revisions to its Tariff F.C.C. No. 1 in Transmittal No. 7 to “enable [interexchange carriers (IXCs)] to connect with Teliax’s tandem using [Session Initiated Protocol (SIP)] connections and to use those interconnection points to exchange traffic with end offices in one or more [Local Access and Transport Areas (LATA)].”¹ Among other defects, the proposed tariff revisions include charges for services falling outside of the regulated interstate switched access charge regime, in violation of the *USF/ICC Transformation Order*.² Because the proposed tariff revisions include charges for services that may not be tariffed, we reject Transmittal No. 7 in its entirety.

II. BACKGROUND

2. In the 2011 *USF/ICC Transformation Order*, the Commission comprehensively reformed the intercarrier compensation system by adopting bill-and-keep “as the default methodology for all intercarrier compensation traffic.”³ As part of that comprehensive reform, the Commission adopted a prospective intercarrier compensation framework for certain voice over Internet protocol (VoIP) traffic, which it called VoIP-public switched telecommunications network (PSTN) traffic.⁴ The Commission defined “VoIP-PSTN traffic” as “traffic exchanged over PSTN facilities that originates and/or terminates in IP format.”⁵ The Commission focused specifically on whether the exchange of traffic between a local exchange carrier and another carrier occurs in Time-Division Multiplexing (TDM) format (and not in IP format).⁶ Confirming this approach, it explained that, in the context of the VoIP-PSTN intercarrier

¹ Letter from Carey Roesel, Consultant, Inteserra Consulting Group, to Marlene Dortch, Secretary, FCC, Transmittal No. 7 (filed Apr. 23, 2021) (Transmittal Letter); Teliax Colorado, LLC, Transmittal No. 7, Tariff F.C.C. No. 1 (filed Apr. 23, 2021) (Transmittal No. 7).

² *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), *pets. for review denied sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014); 47 CFR § 61.26.

³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17904, para. 736 (“setting an end state for all traffic”).

⁴ *Id.* at 18005-06, para. 940.

⁵ *Id.*

⁶ *Id.*

compensation regime, the reference to “PSTN” referred to the exchange of traffic between carriers in a TDM format.⁷

3. The Commission also addressed the role of tariffs for VoIP-PSTN traffic during the transition to a bill-and-keep regime.⁸ It explained that carriers may tariff charges for toll VoIP-PSTN traffic at rates equal to interstate access rates in federal or state tariffs but remain free to negotiate interconnection agreements specifying alternative compensation for that traffic.⁹ Under this approach, carriers are permitted to file tariffs providing that, in the absence of an interconnection agreement, toll VoIP-PSTN traffic will be subject to rates that are not more than originating and terminating interstate access rates.¹⁰ The Commission specified that, for interstate toll VoIP-PSTN traffic, the relevant language will be included in a tariff filed with the Commission, and for intrastate toll VoIP-PSTN traffic, the rates may be included in a state tariff.¹¹ That discussion did not extend to traffic falling outside of the VoIP-PSTN category. Thus, the Commission explicitly allowed (but did not require) carriers to tariff VoIP-PSTN traffic during the transition to bill-and-keep, but made no such allowances for traffic that does not touch the PSTN.

4. The proposed tariff revisions were filed on 15-days’ notice and, as such, absent Commission action, the proposed tariff revisions would become effective on May 8, 2021.¹² Section 3.3 of the proposed tariff revisions introduces new “Dedicated Access Services” and section 3.3.1 is titled “Application of Dedicated Access Services Charges When Connecting via Optional Hub [Point of Interface (POI)] or Alternate Access Tandem.”¹³ Teliax describes the services as enabling IXC’s to connect with Teliax’s tandem using SIP connections and to use those interconnection points to exchange traffic with end offices in one or more LATAs.¹⁴ These services include the “functional equivalent” of a number of incumbent local exchange carrier elements with rates assessed on a “minute-of-use equivalent” basis.¹⁵ The proposed tariff revisions also assess charges for these services irrespective of whether the traffic is exchanged in Time-Division Multiplexing (TDM) or SIP format.¹⁶

5. On April 30, 2021, CenturyLink Communications, LLC and Level 3 Communications, LLC (CenturyLink), as well as AT&T Services, Inc. (AT&T), and Bandwidth, Inc. and Bandwidth.com CLEC, LLC (Bandwidth) (together, the “Petitioners”) filed petitions to reject, or in the alternative, to suspend and investigate the Teliax tariff filing.¹⁷ The Petitioners contend that the proposed Teliax tariff revisions are unlawful for a number of reasons, including that the proposed revisions: unlawfully tariff services and functions that are not regulated switched access services, violate the competitive LEC benchmark rule (47

⁷ *Id.*, n. 1891.

⁸ *Id.* at 18019-20, para. 961 (“Roll of Tariffs”).

⁹ *Id.* at 18019, para. 960.

¹⁰ *Id.* at 18019-20, para. 961.

¹¹ *Id.*

¹² 47 CFR § 61.58(a)(2)(i).

¹³ Transmittal No. 7, § 3.3.1.

¹⁴ Transmittal Letter.

¹⁵ Transmittal No. 7, § 3.3.1(A).

¹⁶ *Id.*, § 3.3(C).

¹⁷ See Petition of CenturyLink Communications, LLC and Level 3 Communications, LLC to Reject or Suspend and Investigate, Teliax, Inc. Tariff F.C.C. No. 1, Transmittal No. 7 (filed Apr. 30, 2021) (CenturyLink Petition); Petition of AT&T to Reject or Suspend and Investigate Teliax, Inc. Tariff F.C.C. No. 1, Transmittal No. 7 (filed Apr. 30, 2021) (AT&T Petition); Petition of Bandwidth Inc. and Bandwidth.com CLEC, LLC to Reject or Suspend and Investigate Teliax, Inc. Tariff F.C.C. No. 1, Transmittal No. 7 (filed Apr. 30, 2021) (Bandwidth Petition) (collectively, Petitions).

CFR § 61.26) and applicable rate caps, unlawfully increase the company's rates, and include charges for services that Teliix does not provide.¹⁸

6. Teliix filed a response to the Petitioners filings on May 6, 2021, requesting that the petitions be denied.¹⁹ In its Response, Teliix argues that “each of the Petitioners’ reasons why Teliix’s tariff filing is purportedly unlawful fails.”²⁰ Teliix claims that its proposed tariff revisions comply with the competitive LEC benchmark rule and that Petitioners misread the applicable Commission precedent regarding the exchange of IP traffic.²¹ In addition, Teliix contends that one of the provisions that some of the Petitioners object to is “entirely optional,” and can be “easily avoided” by the Petitioners.²² Finally, Teliix argues that the Commission should reject the Petitions because Petitioners failed “to satisfy the four-part test set forth in 47 C.F.R. § 1.773(a)(ii)” which governs petitions for suspension or rejection of tariff filings, and that Petitioners inadequately support their substantive challenges to the proposed tariff revisions.²³

III. DISCUSSION

7. The Communications Act of 1934, as amended (the Act), grants the Commission authority to review tariff filings to ensure they comply with the Act and with the Commission’s rules and orders.²⁴ The United States Court of Appeals for the District of Columbia Circuit has explained that the Commission has “the power and in some cases the duty” to reject a tariff that is demonstrably unlawful on its face, or that conflicts with a statute or with an agency regulation or order.²⁵ We rely on this authority to reject the proposed tariff revisions in their entirety.²⁶

8. In its petition, CenturyLink observes that the proposed tariff revisions contain rates that would apply to the exchange of traffic that is purely IP-IP and does not touch the PSTN.²⁷ CenturyLink

¹⁸ CenturyLink Petition at 2-9; AT&T Petition at 1-3; Bandwidth Petition at 1-2; *see* 47 CFR § 61.26.

¹⁹ Teliix’s Response to Petitions of CenturyLink Communications, LLC and Level 3 Communications, LLC, AT&T Services, Inc. and Bandwidth.com CLEC, LLC, to Suspend or Reject Teliix’s Revised Tariff (filed May 6, 2021) (Teliix Response).

²⁰ *Id.* at 2.

²¹ *Id.* at 2, 7.

²² *Id.* at 2.

²³ *Id.* at 3.

²⁴ 47 U.S.C. § 204.

²⁵ *Associated Press v. FCC*, 448 F.2d 1095, 1103 (D.C. Cir. 1971); *see also Municipal Light Bds. v. FPC*, 450 F.2d 1341, 1346 (D.C. Cir. 1971), *cert. denied*, 405 U.S. 989 (1972) (finding that the Commission may reject a tariff filing if the filing is “so patently a nullity as a matter of substantive law, that administrative efficiency and justice are furthered by obviating any docket at the threshold rather than opening a futile docket.”); *Capital Network Sys., Inc. v. FCC*, 28 F.3d 201, 204 (D.C. Cir. 1994); *American Broadcasting Cos. v. FCC*, 663 F.2d 133, 138 (D.C. Cir. 1980).

²⁶ In deciding whether to reject proposed tariff revisions, we look at whether the revisions are unlawful on their face. *Ameritech Operating Companies Tariff F.C.C. No. 2 et al.*, Transmittal No. 1847 et al., Order, 31 FCC Rcd 7673 (WCB 2016); *LTE Wireless Inc. June 12, 2020 Access Charge Tariff Filing, Tariff F.C.C. No. 1*, WCB/Pricing File No. 20-01, Transmittal No. 1, Order, 35 FCC Rcd 6511 (PPD 2020); *Standard Tandem LLC October 3, 2019 Access Charge Tariff Filing, Tariff F.C.C. No. 1*, WCB/Pricing File No. 19-02, Transmittal No. 1, Order, 34 FCC Rcd 9479 (PPD 2019). Teliix’s reliance on section 1.773(a)(ii) of the Commission’s rules is misplaced. *See* Reply at 3-4; 47 CFR § 1.773(a)(ii). That provision, by its terms, applies only to petitions to suspend, not to petitions to reject, or to the Commission’s authority to act on its own initiative. *See* 47 CFR § 1.773(a)(ii) (“tariff filings by nondominant carriers . . . will not be suspended by the Commission unless the *petition* requesting *suspension*” meets the four-prong test Teliix cites in its Response) (emphasis added).

²⁷ CenturyLink Petition at 2-4.

and Bandwidth argue that charges for IP traffic that never touches the PSTN may not be tariffed because such traffic falls outside of the regulated intercarrier compensation regime.²⁸ We agree with this argument and find that the language in section 3.3.1 of the proposed tariff revisions is unlawful because it does not limit the application of such charges to VoIP-PSTN traffic.

9. Charges for IP traffic that falls outside of the Commission's intercarrier compensation framework cannot be imposed via tariffs and Teliax's arguments that the Commission meant to allow the tariffing of all-IP services are based on a misreading of the *USF/ICC Transformation Order*.²⁹ The Commission was clear in the *USF/ICC Transformation Order* that only IP traffic "exchanged over PSTN facilities" is subject to the intercarrier compensation regime.³⁰ On its face, the proposed tariff language is not limited to IP traffic meeting the VoIP-PSTN definition. Because the proposed tariff revisions include charges for "Dedicated Access Services" that may apply to all IP traffic, without explicitly limiting such charges to traffic meeting the VoIP-PSTN definition, the proposed revisions are unlawful.

10. We need not and do not reach the other issues raised in the Petitions because we reject the proposed tariff revisions as unlawful. The Petitions are granted to the extent consistent with this Order and are otherwise dismissed.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i), 4(j), and 204 of the Communications Act, 47 U.S.C. §§ 151, 152, 154(i), 154(j), and 204, and sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, that the proposed Teliax Colorado, LLC Tariff F.C.C. No. 1, Transmittal No. 7, IS HEREBY REJECTED.

12. IT IS FURTHER ORDERED that the Petition of CenturyLink Communications, LLC and Level 3 Communications, LLC to Reject or Suspend and Investigate, the Petition of AT&T to Reject or Suspend and Investigate, and the Petition of Bandwidth Inc. and Bandwidth.com CLEC, LLC to Reject or Suspend and Investigate the proposed tariff revisions contained in Teliax Colorado, LLC Tariff F.C.C. No. 1, Transmittal No. 7 are GRANTED to the extent indicated herein and are otherwise DISMISSED.

13. IT IS FURTHER ORDERED that, pursuant to section 61.69 of the Commission's rules, 47 CFR § 61.69, Teliax Colorado, LLC SHALL FILE a supplement within five business days from the release date of this order noting that this proposed transmittal was rejected in its entirety by the Federal Communications Commission.

FEDERAL COMMUNICATIONS COMMISSION

Gil M. Strobel
Chief, Pricing Policy Division
Wireline Competition Bureau

²⁸ CenturyLink Petition at i-ii; Bandwidth Petition at 1-2.

²⁹ Teliax Response at 7-8. To the extent that Teliax argues that we or the Petitioners are misreading its tariff because "IP-to-IP interconnection" means different things in different contexts," its proposed revisions are impermissibly vague and ambiguous. Teliax Response at 7, n. 7; *see also* 47 CFR § 61.2(a) (all tariffs must contain "clear and explicit explanatory statements regarding the rates and regulations" to "remove all doubt as to their proper application.")). The application of a tariff provision should be clear to everyone and should not mean different things to different people.

³⁰ *USF/ICC Transformation Order*, 26 FCC Rcd at 18005-06, para. 940.